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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,135	07/24/2003	Timothy M. Holub	Orgtnt2-4223	9351
33042	7590	09/27/2005		
LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6780			EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,135

Applicant(s)

HOLUB, TIMOTHY M.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14, 16, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a final rejection based on the merits of application SN 10/626,135.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In regards to the new claim 16, it is redundant since "substantially" as stated on line 1 of claim 16 and "majority" stated on line 6 of claim 1 implies the same limitation and therefore receives the same art rejection as claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

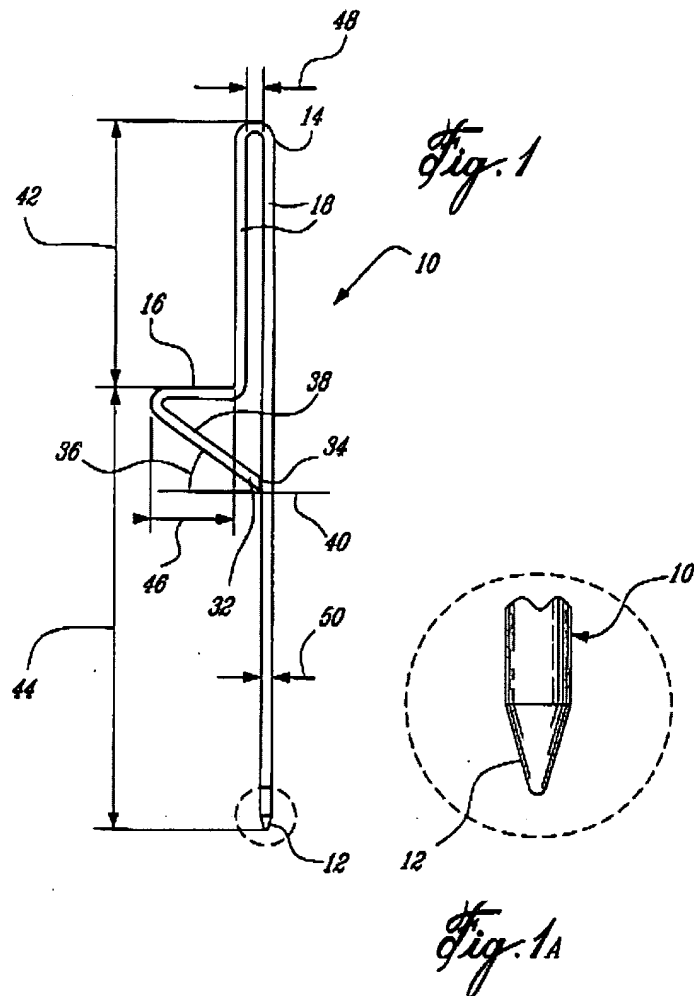
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 6,412,748 to Girard. Girard ('748) discloses an anchoring mechanism that has a shaft (18) with a penetration end (12) and a driving end (14). The gap (48) inherently serves as attachment portion to secure objects to it. The anchoring

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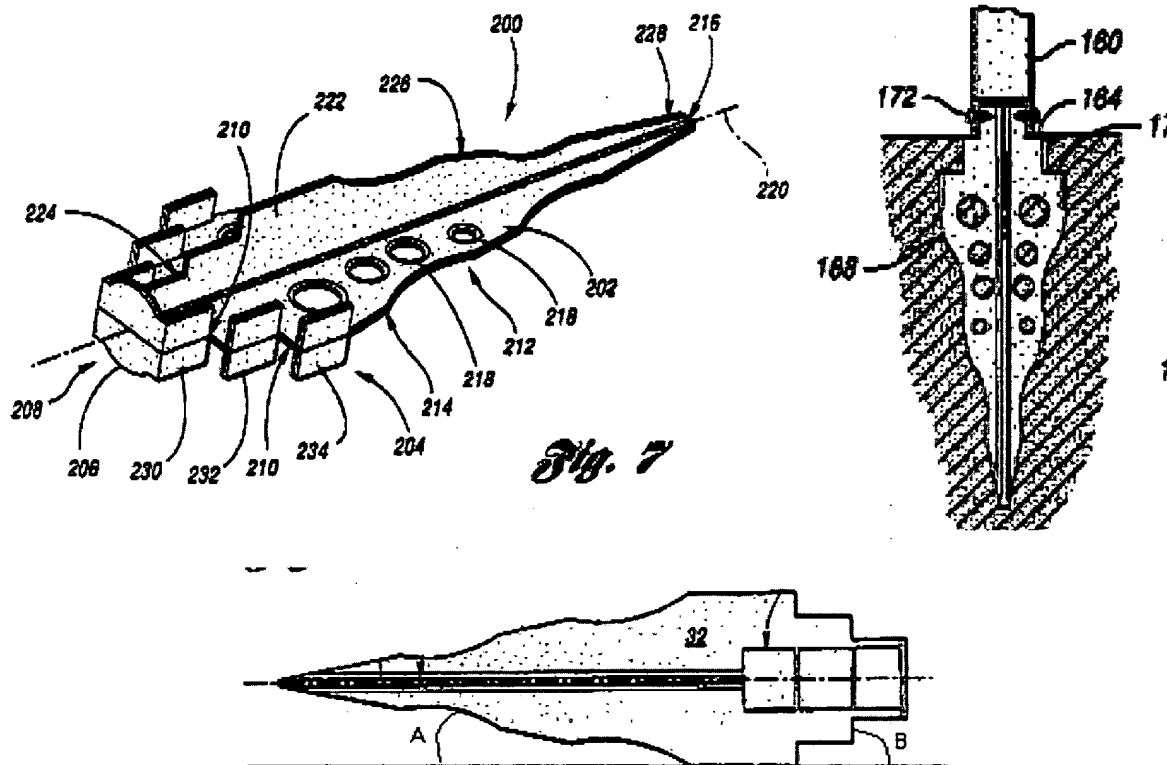
mechanism has a short vane defined by members (38 and 16). The short vane (38,16) lies in the same plane as the shaft axis or a plane parallel to the shaft axis as shown in fig 1. The insertion edge is defined by step (38) and member (16) defines the extraction edge. Defined by those members and the shaft (10) is an open area that soil will fill into when driven into the ground. When the anchoring mechanism is driven into the ground such that step (16) is below the surface, more force will be needed to then pull the mechanism out of the ground. Girard does not directly disclose the level to which the mechanism will be driven, but there is nothing preventing it to be driven to any depth desired. The angle of insertion (36) is disclosed to be around 30 degrees compared with the angle of extraction formed between (16) and (18) which is approximately 90 degrees thus making it easier to drive in then pull out. The entire anchoring mechanism is made from the same wire of diameter (50) in the same plane. (See line 15, col. 4)



6. Claims 1-6, 11, and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. patent 6,401,408 to Schwartz. Schwartz ('408) discloses a plastic stake that has a shaft (222) with a penetration end (216) and a driving end (206). Surface (230) is used to drive a screw (172) in to secure another object to the stake. The planar member (202, 168) is the short vane defined with the shoulder (210,176) as the extraction edge. A majority of the height of the short vane is located between the penetration end (216) and the midpoint. Holes (218) provide backfill space for soil retention. The edge on the planar member (202, 168) defined from the penetration end

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(216) to the first step (234) is the insertion edge. The angle from that edge to the vertical is the insertion angle (A) and has a gentle angle making it easy to drive into the ground while the angle of the extraction edge with the vertical (B), creates an angle of 90 degrees, which makes it more difficult to pull out.



Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,412,748 to Girard. Girard ('748) discloses an anchoring mechanism that has a shaft (18) with a penetration end (12) and a driving end (14). The gap (48) inherently serves as attachment portion to secure objects to it. The anchoring mechanism has a short vane defined by members (38 and 16). The short vane (38,16) lies in the same plane as the shaft axis or a plane parallel to the shaft axis as shown in fig 1. The insertion edge is defined by step (38) and member (16) defines the extraction edge. Defined by those members and the shaft (10) is an open area that soil will fill into when driven into the ground. When the anchoring mechanism is driven into the ground such that step (16) is below the surface, more force will be needed to then pull the mechanism out of the ground. Girard does not directly disclose the level to which the mechanism will be driven, but there is nothing preventing it to be driven to any depth desired. The angle of insertion (36) is disclosed to be around 30 degrees compared with the angle of extraction formed between (16) and (18) which is approximately 90 degrees thus making it easier to drive in then pull out. The entire anchoring mechanism is made from the same wire of diameter (50) in the same plane. (See line 15, col. 4). Girard does not disclose a majority of the short vane below the midpoint. It would have been obvious at the time of the invention for a person of ordinary skill in the art to take the stake of Girard and shorten the shaft so that the midpoint is above the short vane member (16) and the penetration end is near the end (34) of the vane member (38) so that the stake uses less material and is cheaper to manufacture. This type of "size" modification being well within the level of one with ordinary skill in the art. (Note: A change in size is

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generally recognized as being within the level of ordinary skill in the art (In re Rose. 105 USPQ 237 (CCPA 1955).)

Response to Arguments

8. Applicant's arguments filed September 11, 2005 have been fully considered but they are not persuasive.

9. In response to applicant's arguments to Schwartz's 102 rejection on claim 1: although the vane disclosed in Schwartz is located in the top portion of the stake if viewed with respect to the area of the vane, it should be noted that the amended claim 1 does not specify what part of the short vane is substantially between the penetration end and the midpoint. If the vane is viewed with respect to height, then a majority of the height of the vane can be considered below the midpoint.

10. In response to applicant's arguments to Schwartz and Girard's 102 rejection on claim 11: there is nothing in either reference stating that the leading edges are exactly 90 degrees. For example, when constructing either stake, the degree in which the edges extend will vary slightly. The description "approximately ninety" leaves some room for leeway either up or down. Therefore "approximately ninety" can be a little less than ninety, which would overlap the range given by the amended claims 11 and 6 of less than ninety.

11. In response to applicant's arguments to Girard's 102 rejection on claim 1: because of the amendment made to claim 1, the 102 rejection to Girard has been overcome; however, as discussed above a 103 rejection now applies.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

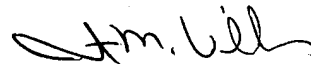
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-FRI 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA
9/21/05



JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637